* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Writ Petition (C) No. 4141 of 2006

Date of Decision : 26-07-2007

GANESH GOYAL ..... Petitioner
Through Ms. Pragnya Routray, Advocate

versus

SECRETARY, DELHI DEVELOPMENT AUTHORITY ..... Respondent
Through Mr. Yeeshu Jain, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the reporter or not ? Yes

3. Whether the judgment should be reported in the `Digest?' Yes

REKHA SHARMA, J.

One Om Goyal was employed as Beldar with Delhi Development Authority (in short 'DDA') since 1982. Unfortunately, on July 24, 1992 while still in service, he died. According to his family members, he died in an accident. As per the DDA, he committed suicide. This, however, is not an issue before me. The issue is denial of compassionate appointment to his son Ganesh Goyal.

It so happened that three years after the death of Om Goyal, his widow Lakshmi Devi made an application to DDA for

compassionate appointment in his place. The same did not find favour with the DDA and accordingly vide communication dated July 26, 1995, she was so informed. She made no grievance of the rejection of her application. However, on April 5, 1999, the demand for compassionate appointment re-surfaced. This time it emanated from Ganesh Goyal, son of deceased Om Goyal. As per him, his father left behind him his wife and three children including him and that the family has been living in a state of penury ever since his death. He moved the application after he had attained the age of majority on the basis that he was IXth pass and was suitable for any class IV job. The DDA, it seems was not inclined to accede to his request. His case, therefore, was taken up by the Municipal Employees Union who sent legal notice to the Secretary, DDA on June 26, 1999. As nothing happened, the Union raised an industrial dispute which was referred to the Industrial Tribunal for adjudication with the following terms of reference:

> "Whether Shri Ganesh Goyal son of late Om Goyal is entitled to be appointed on compassionate ground and if so, what directions are necessary in this respect?"

The Industrial Tribunal, vide its award dated March 3, 2005 decided the reference against Ganesh Goyal holding that the decision of the DDA in not providing him the job was neither illegal nor unjustified. Aggrieved by the said decision, he has preferred the present writ petition.

It needs to be borne in mind that a person seeking

compassionate appointment has only a right to be considered within the framework of the provisions governing such appointments and if there are no provisions then within the parameters laid down by the authorities from time to time. Such a person has no indefeasible right to be appointed.

A perusal of the award of the Industrial Tribunal reveals that the DDA had constituted a 'Screening Committee' to recommend compassionate appointments. The Committee was headed by no less a person than the Finance Member of the DDA and three other senior Officers, namely, Commissioner (Personnel), Director (Personnel) and Joint Director (Vigilance). The Committee decided to make an assessment of the deservability of compassionate appointment by taking an overall position of liabilities of the candidates as against existence of supporting circumstances. The supporting circumstances which were considered were income of the applicants from various sources; the movable and immovable assets in their possession; income from pension and other sources. The liabilities which were taken into account were the number of minor children and unmarried daughters left behind by the deceased, and also the fact whether the applicant in a given case was a widow and not the son of the deceased employee and whether the applicant was working and not waiting for compassionate appointment only. Having set out these parameters, it considered 30 cases including that of the petitioner and after deliberations recommended 11 names for appointment out of which four were kept in the panel for further vacancies. True, the name of the petitioner did not figure in the 11 candidates who were

recommended but that was because the Committee did not find him deserving enough in comparison to others. In this background, the petitioner cannot have any grouse that his case was not considered or if considered, it was dealt in a slip-shod or cavalier manner. Therefore, I see no reason to interfere with the decision making process of the Screening Committee, for that was its prerogative.

The object and purpose of providing employment on compassionate ground is to mitigate the hardship which befalls on the family members due to the death of the only bread earner in the family. In this context, it will be appropriate to quote the following paragraph from the judgment of Supreme Court in *Punjab National Bank and others v. Ashwini Kumar Taneja (2004) 7 Supreme Court Cases 265*:

> "In *Sushma Gosain v. Union of India (1989) 4 SCC 468*, it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India 1991 Supp (2) SCC 689* and *Union of India v. Bhagwan Singh (1995) 6 SCC 476*. In

> *Director of Education (Secondary) v. Pushpendra Kumar (1998) 5 SCC 192* it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

The Supreme Court in the aforementioned judgment has laid emphasis on early disposal of cases of compassionate appointments. Here, however, is a case where it is not the authorities but the family of the deceased which has been slack. The first request for compassionate appointment came from the wife of the deceased but it was after three years of his death. The present petitioner had applied on the same ground four years after the rejection of the

application of his mother. Of course, he has taken the plea that he was minor at the time of death of his father but that has been held by the Supreme Court in the aforementioned judgment as no ground “unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit.” Having regard to the belated applications, firstly moved by the wife of the deceased and then by the petitioner, an adverse inference can be drawn that the family was not in dire need of job consequent upon the death of Om Goyal and that they were able to fend for themselves.

For the foregoing reasons, I find no merit in the writ petition. The same is dismissed.

REKHA SHARMA,J

JULY 26, 2007
sl/g